

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Confirmation No. 6737

Steen McCanne, et al.

Group Art Unit No.: 2444

Serial No.: 10/618,369

Examiner: Joiya M. Cloud

Filed: July 10, 2003

For: SYSTEM FOR MULTIPOINT INFRASTRUCTURE TRANSPORT IN A COMPUTER NETWORK

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REPLY BRIEF ON APPEAL

Sir:

Further to the Notice of Appeal filed September 3, 2010, and in reply to the Examiner's Answer mailed on November 29, 2010, the Appellants hereby submit their Reply Brief on appeal pursuant to 37 C.F.R. § 41.41.

The shortened statutory period for the Reply Brief runs until January 29, 2011. The Appellants respectfully request reconsideration of the application in light of the following remarks. Each of the new arguments advanced in the Examiner's Answer is addressed below.

FIRST ARGUMENT

The Appellants traverse the 35 U.S.C. §101 rejection of Claims 36 and 16 by emphasizing the fact that each of Claims 36 and 16 recites "an apparatus," which is a machine, and thus statutory subject matter set forth by 35 U.S.C. §101.

35 U.S.C. §101 states that "whoever invents or discovers any new and useful process, **machine**, manufacture, or composition of matter, or any new and useful improvements thereof,

may obtain a patent therefor, subject to the conditions and requirements of this title.” (Emphasis added) Merriam-Webster dictionary defines a **machine** as “any of various **apparatuses** formerly used to produce stage effects,” or “a mechanically, electrically or electronically operated **device** for performing a task.” (<http://www.merriam-webster.com/dictionary/machine>) Furthermore, Merriam-Webster dictionary defines an apparatus as “a set of materials of **equipment** designed for a particular use,” or “an instrument or **appliance** designed for a specific operation.” (<http://www.merriam-webster.com/dictionary/apparatus>) An apparatus is clearly a device, a piece of equipment or an appliance, and as such, is a machine. In fact, on a number of occasions, the Federal Circuit held that an **apparatus** claim with process steps is simply an apparatus claim including functional limitations and may be valid under 35 U.S.C. §101. (*R.A.C.C. Indus. v. Stun-tech, Inc.*, 178 F.3d 1309 (Fed. Cir. 1998)) Apparatus claims have been widely held as claims directed to statutory subject matter such as a machine.

Appellants’ Claims 36 and 16 meet the requirements of 35 U.S.C. §101 because they are directed to an apparatus, which is a machine, and which in turn is statutory subject matter. In the body of the claim, Claim 36 recites a data network [...] comprising a plurality of **apparatuses**, each of which comprises a data store that stores a plurality of entries [...]. Therefore, at least because Claim 36 recites an apparatus with process steps, Claim 36 is directed to a machine, which is statutory subject matter. Claim 16 is also directed to statutory subject matter because Claims 16 recites an apparatus for processing data. A claim directed to an apparatus is in fact directed to a machine, and as such, meets the requirements of 35 U.S.C. §101.

It is mindboggling why the Examiner issued and maintained a §101 rejection with respect to Claims 16 and 36. It is indisputable that claims directed to a machine are directed to statutory subject matter because a machine is one of the statutory subject matters set forth by 35 U.S.C. §101. It is indisputable that an apparatus is a form of a machine, and thus a claim directed to an apparatus is also directed to a machine, statutory subject matter. Appellants’ Claims 16 and 36 **are** directed to an apparatus and thus **are** directed to statutory subject matter. Thus, Appellants’ Claims 16 and 36 clearly meet the requirements set forth in 35 U.S.C. §101. Thus, Appellants

are sincerely concerned about the Examiner's understanding of the scope of subject matter set forth in 35 U.S.C. §101 and about the Examiner's interpretation of a machine as being non-statutory subject matter.

The reasons for rejecting Appellants' Claims 16 and 36 under 35 U.S.C. §101 are beyond the Appellants' comprehension. In rejecting Claims 16 and 36, the Examiner states that an apparatus appears to be a software processor/agent in view of the Appellants' specification on page 2 (ll. 31+) and page 3 (ll. 1-8). (Examiner's Answer: page 3, ll. 13-16) This is incorrect because, in the cited excerpts, the specification describes a processing agent, not an apparatus. Instead of relying on a well known definition of an apparatus based on Merriam-Webster dictionary (see above) and a detailed description of an apparatus-computer (comprising various pieces of equipment) included on pages 5-6 of the Appellants' specification, the Examiner picks a portion of the specification that is neither intended nor proposed to define the apparatus recited in Claims 16 and 36.

Therefore, for all the reasons described above, the Appellants disagree with the Examiner's reasons for rejecting Claims 16 and 36 under 35 U.S.C. §101, and cannot subscribe to the Examiner's contention that a machine is not statutory subject matter. The Appellants cannot agree with the Examiner that an apparatus is not a machine and that a machine is not statutory subject matter under 35 U.S.C. §101. The Appellants request that the rejection be reversed.

## SECOND ARGUMENT

The Examiner alleges that the Appellants' claims contain no specific claim language to define the "entries" against which the request to run a query was issued. This is incorrect.

Each of Claims 16, 26 and 36 recites "a request to run a query against the entries stored in the data store." "[E]ach entry comprises data to be transmitted from a rendezvous point of the multicast group to members of the multicast group." Therefore, each of Claims 16, 26 and 36 contains specific language to define the "entries." The entries are not just any entries. The

recited entries comprise data to be disseminated (transmitted) from the rendezvous point of the multicast group to members of the multicast group. Therefore, even if the “entries” recited in each of Claims 16, 26 and 36 are interpreted according to their broadest reasonable interpretation, each of the “entries” comprises data to be disseminated from a rendezvous point of the multicast group to members of the multicast group.”

Therefore, contrary to the Examiner’s allegation, each of Claims 16, 26 and 36 contains specific language to define the “entries,” recites specific requirements of the exact form of the entries, and recites specific criteria that need to be matched.

### THIRD ARGUMENT

The Examiner alleges that because of its broadest reasonable interpretation, a request to run a query against the entries stored in the data store, as claimed, can be interpreted as a request from a non-member to determine a group leader, as disclosed in Badovinat. (Examiner’s Answer: page 8, ll. 15-19) This is incorrect.

As discussed above, each of Claims 16, 26 and 36 contains **specific claim language to define the “entries.”** In particular, each of Claims 16, 26 and 36 recites that the entries against which the query should be run are the entries that comprise data to be disseminated (transmitted) from a rendezvous point of a multicast group to members of the multicast group.

In sharp contrast, Badovinat’ describes an entry that is sent by a node to a non-member, not **disseminated by a rendezvous point to members of the group**, as claimed. In Badovinat, a node that receives an INQUIRY from a non-member that wants to join a group, responds to the INQUIRY by returning a name of the server that is a group leader. (Badovinat: col. 7, ll. 20-32) In Badovinat, the name of the server that is the group leader is transmitted to a non-member, not to **“members of the multicast group,”** as claimed. The name of the server is merely transmitted because the non-member wants to join the group, but not because it is the entry that is **“disseminated to members of the multicast group,”** as claimed. In Badovinat, the name of the group leader is transmitted to the non-member that wanted to join the group, but it is not an entry

that the rendezvous point disseminated to members of the multicast group, as claimed.

Therefore, Badovinatz' request to determine a group leader is not the request to run a query against the entries that are disseminated by the rendezvous point to the members of the multicast group, as claimed.

CONCLUSION AND PRAYER FOR RELIEF

Based on the foregoing, it is respectfully submitted that the rejections of Claims 16, 18-24, 26 and 28-39 lack the requisite factual and legal bases. Appellants respectfully request that the Honorable Board reverse the rejections of Claims 16, 18-24, 26 and 28-39.

Respectfully submitted,

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Dated: January 21, 2011

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